

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

**TH 10a**

Filed: 8/14/02
49th Day: 10/2/02
180th Day: 2/10/03
Staff: AJP-LB
Staff Report: 12/7/02
Hearing Date: 1/8-11/03
Commission Action:

STAFF REPORT: REGULAR CALENDAR**APPLICATION NUMBER:** 5-01-308**APPLICANT:** Spinnaker Bay Slip Owners Association**AGENT:** Tom Welch**PROJECT LOCATION:** Spinnaker Bay Marina, adjacent to Casino Point, Long Point, and Empire Landing, City of Long Beach

PROJECT DESCRIPTION: After the fact permit for the replacement of 15 deteriorated concrete boat fingers, and replacement of an additional approximately 92 deteriorated concrete boat fingers, with new concrete fingers, and sections of headwalks, over a ten year period, within a 192 boat slip marina. There will be no change to the number, size, or configuration of the existing boat slips.

APPROVALS RECEIVED: City of Long Approval in Concept; U.S. army Corps of Engineers Letter of Permission, July 29, 2002

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends **APPROVAL** of the proposed development with eight special conditions including: 1) construction responsibilities and best management practices; 2) identification of a construction debris disposal site; 3) U.S. Army Corps of Engineers final approval; 4) water quality requirements for the operation and construction of the marina; and 5) signage to inform boaters of the location and use of the pump out station.

STAFF RECOMMENDATION:**I. MOTION, STAFF RECOMMENDATION AND RESOLUTION FOR 5-01-308:**

Staff recommends that the Commission make the following motion and adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit #5-01-308 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a permit, subject to the conditions below, for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the provisions of Chapter 3 of the California Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a local coastal program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/ or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternative that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.

4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to inundation or dispersion in the waters of the marina;
- (b) Any and all debris resulting from construction activities shall be removed from the site within 10 days of completion of construction;
- (c) No machinery or construction materials not essential for project improvements shall be allowed at any time in the intertidal zone;
- (d) If turbid conditions are generated during construction, a silt curtain shall be utilized to control turbidity;
- (e) Floating booms shall be used to contain debris discharged into coastal waters and any debris discharged shall be removed as soon as possible but no later than the end of each day;
- (f) Non-buoyant debris discharged into coastal waters shall be recovered by divers as soon as possible after loss; and
- (g) Reasonable and prudent measures shall be taken to prevent all discharge of fuel or oily waste from heavy machinery, pile drivers or construction equipment or power tools into the waters of the Marina del Rey. The applicant and the applicant's contractors shall have adequate equipment available to contain any such spill immediately.

2. LOCATION OF DEBRIS DISPOSAL SITE

PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the demolition and construction debris resulting from the proposed project. Disposal shall occur at the approved disposal site. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

3. **U.S. ARMY CORPS OF ENGINEERS APPROVAL**

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall provide to the Executive Director a copy of a permit issued by U.S. Army Corps of Engineers, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the U.S. Army Corps of Engineers. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

4. **WATER QUALITY MANAGEMENT PLAN**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a detailed Water Quality/Best Management Practices (BMPs) Program for controlling adverse impacts to water quality related to long-term water-borne berthing of vessels in the marina. The plan shall be prepared by a qualified professional with expertise in the control of water quality impacts related to marinas.

1. The plan shall demonstrate that long-term water-borne berthing of vessels in the marina shall be managed in a manner which protects water quality and that persons using the marina are made aware of the rules related to boat maintenance and use. To the extent to which physical features or objects (trash containers, recycling bins) are required in the plan, an attached site plan shall show the location where these features or objects will be installed.
2. The plan shall include, at a minimum, the following components or measures:
 - (a) Boat Cleaning Management Measures:
 1. The marina shall prohibit in-water boat hull washing which does not occur by hand;
 2. The marina shall prohibit in-the-water hull scraping or any process that occurs under water which results in the removal of paint from boat hulls;
 3. The marina shall ensure that marina tenants, when washing boats, utilize detergents and cleaning components that are phosphate-free and bio-degradable. Amounts used shall be minimized; and
 4. The marina shall prohibit the use of detergents containing ammonia, sodium hypochlorite, chlorinated solvents, petroleum distillates or lye.
 - (b) Implementation of a solid waste reduction and recycling program including the following Solid Waste Management Measures:

1. Trash receptacles shall be provided at the entrances to all docks;
2. Containers for recyclables shall be provided and sited so that they are convenient for boaters (i.e. close to the dock); and
3. All trash and separate containers for recyclables, oil wastes, fish wastes, etc. shall be clearly marked, have the capacity to handle all waste streams, and be sited so that they are convenient for boaters (i.e. close to the dock).
4. All solid waste, including sewage, shall be properly disposed of only at appropriately designated facilities.

(c) Implementation of a liquid material control program which provides and maintains appropriate storage, transfer, containment and disposal facilities for liquid materials commonly used in boat maintenance including the following Liquid Waste Management Measures:

1. The marina shall provide a secure location to store hazardous wastes, including petroleum products, old gasoline or gasoline with water, absorbent materials, and oily rags;
2. Containers for anti-freeze, lead acid batteries, used oil and used oil filters which will be collected separately for recycling shall be provided by the marina;
3. Signage shall be placed on all regular trash containers to indicate that hazardous wastes may not be disposed of in the container. The containers shall notify boaters as to how to dispose of hazardous wastes and where to recycle certain recyclable wastes; and
4. The marina shall maintain an adequate supply of absorbent pads for use by marina tenants and lessees for the cleaning of minor spills.

(d) Petroleum Control Management Measures:

1. The marina shall provide a service that reduces oily discharges from in-board engines, either a bilge pump-out facility (with an oil-water separation device) or the marina shall promote the use of oil-absorbing materials in the bilge areas or engine compartments of all boats with inboard engines. When distributing oil absorbents to boaters, the marina shall provide adequate safety warnings as to the safe use and handling of flammable materials and methods to prevent fouling the bilge pump. Oil absorbent materials should be examined at least once a year and replaced as necessary. The marina shall recycle the materials, if possible, or dispose of them in accordance with hazardous waste disposal regulations. The marina environmental policies shall encourage boaters to regularly inspect and maintain engines, lines and hoses in order to prevent oil and fuel spills. These policies shall encourage boaters to use

preventive engine maintenance, oil absorbents, bilge pump-out services, or steam cleaning services as much as possible to clean oily bilge areas. The use of soaps that can be discharged by bilge pumps shall be discouraged.

(e) Public Education Measures:

In addition to these specific components outlined in Special Condition 6.2.(a) through (d) above, the BMP program shall also include enforcement provisions, including eviction from the marina and notice of possible civil or criminal fines and/or penalties, to assure compliance with this program by all marina tenants. The marina shall provide information about all of the measures in the BMP program through a combination of signage, tenant bill inserts and annual distribution of the BMP program to existing and new owners and tenants. The program shall be included and attached to the Homeowners Association's Rules and Regulations.

5. PUMP OUT STATION SIGNAGE

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, and implement, a signage plan as follows:

- A. The applicant shall post one sign at each dock entrance, in a place and size that is visible to boaters. The signs shall: 1) be no less than 12 x 18 inches in size; 2) indicate the location of the pump-out station; and 3) explain that the law requires use of the pump out stations and forbids discharge of untreated sewage into the waters of the state.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

This is a partial after the fact permit application for the removal of 15 floating concrete boat docks: and the removal of an additional approximately 92, deteriorated concrete boat fingers, with new concrete fingers, and sections of headwalks, over a ten year period,

within a 192 boat slip marina. There will be no change to the number, size, or configuration of the existing boat slips.

The project area is located in Spinnaker Cove, within the northeastern portion of Alamitos Bay, in the City of Long Beach. The area is bordered on either side by developed communities with docks and boat slips and is approximately 1.5 miles from the Long Beach Marina's entrance channel. The slips within the marina are owned by the individual property owners that own the single-family homes within the Spinnaker Bay development. According to the applicant the slips can be leased to only those residents that reside within the adjacent Spinnaker Cove condominium development.

B. Public Access and Recreation

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

The proposed project is located between the nearest public road and the sea as well as within coastal waters. The project is the replacement of deteriorated boat fingers and walkways within a private boating marina. The anchorage is a privately owned and operated facility with berthing slips available to the adjacent homeowners. The slips are not available to the general public.

The proposed project does not include reconfiguring the docks or slip size distribution. Slip size and slip number has been an issue with the Commission for public marinas due to the potential impact on public boater access. However, slips within this anchorage are privately owned and not available to the general public. Furthermore, the development includes no intensification of use along the waterside or landside and there will be no increase in demand on the roadway system or surrounding waterways.

According to the applicant, the anchorage was built in approximately 1980 and the slips and walkways are beginning to deteriorate to a point where they need to be replaced. The proposed project will replace deteriorating slips so that the slips will continue to be safe and available for private use. The applicant has identified 107 fingers that will need to be replaced over the next ten years. The applicant has replaced 15 fingers and will replace an additional 92 over an approximately ten-year period.

The applicant states that construction of the new floating dock fingers will be done off-site. The dock fingers will be floated into position and attached to the existing docks. During the assembly of the fingers to the docks, boating use of the slips will not be disrupted. In the event a boat needs to be removed from the slip during construction, the boat will be moved

to a vacant slip and then returned once work is completed. Thus, boater access to this private boating facility will be continuously available.

The maintenance of the boat slips will enhance the anchorage and provide safe facilities. The proposed project will maintain the current mix of boat slip lengths and number of boat slips. Since the anchorage is not open to the public the mix of slip sizes does not raise any Coastal Act issues with regards to public access. Therefore, as proposed the project will not adversely impact public access to the docks and boat slips. As proposed, the project will be consistent with Section 30210 of the Coastal Act.

C. Marine Resources

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240(b) of the Coastal Act states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The Commission has reviewed numerous reports concerning the impacts of chemical pollution and siltation on marine organisms and on coastal recreation. In addition, given the location of the proposed work within a marina supporting both sensitive species and recreational activities, there are concerns about how the work may be performed. In response to these concerns the Commission has begun to impose conditions on development to prevent siltation, spills and pollution as a result of development.

1. Water Quality and Construction Impacts

The proposed project is the replacement of existing boat slip fingers within an existing marina. Due to the proposed project's location on the water, the proposed work may have adverse impacts upon water quality and the marine environment.

The proposed project will not involve disturbance of the marina bottom, where turbidity could pose an impact to water quality. However, the project may include drilling and other construction activity over the water, and adjacent to the water, that may create debris that may fall or be washed into the water. In addition, the improper storage of construction equipment and materials during construction can contribute to water quality impacts. The Commission finds it necessary to require the use of best management practices to minimize impacts upon water quality. In addition, the Commission finds it necessary to identify the following other construction related restrictions: all construction materials and equipment shall be stored landward of the bulkhead, on impervious surfaces only; all construction materials or waste shall be stored in a manner which prevents their movement via runoff, or any other means, into coastal waters; and that any and all construction equipment, materials and debris are removed from upland areas at the conclusion of construction.

Furthermore, boating facilities and their associated activities, such as boat cleaning, storage of hazardous materials, disposal of solid waste, can adversely impact water quality. Therefore, it is necessary to provide a special condition requiring the applicant to provide and implement a Water Quality/Best Management Practices Program that will address these issues.

In addition, demolition of existing structures will generate debris that will need to be disposed of off-site. Since the applicant has not identified a disposal site, and in order to prevent impacts to coastal waters that could occur if such debris were not properly disposed, the Commission imposes a special condition which requires that all demolition debris be disposed of at a legal site approved by the Executive Director. Choice of a site within the coastal zone shall require an amendment to this permit or a new coastal development permit.

The proposed project will maintain the present use and is not expected to create additional adverse impacts on marine resources. However, the Commission finds it necessary to identify the permittee's responsibilities regarding construction and the utilization of best management practices and has conditioned the project accordingly.

Furthermore, the existing private marina provides a solid waste pump out station on their docks for use by their homeowner/boaters. The station is only available for use by the homeowner/boaters. Through the Homeowners Association Rules and Regulations, the homeowners/boaters are made aware that discharging of waste material into the water is prohibited. However, the Rules and Regulations do not mention the provision of the pump out station. Furthermore, homeowners can lease out their slips to residents within the nearby Spinnaker Cove condominium development, and have short-term boater guests. Currently, there is no mechanism in place that provides notice to the lessees, and guests, of

the location and required use of the pump out station. Therefore, as a special condition, the applicant shall provide and implement a signage plan that informs boaters of the location and use of the pump out station.

The Commission, therefore find that, as conditioned, the proposed project conforms with Sections 30230, 30231 and 30240(b) of the Coastal Act.

2. Sensitive Species Impacts

Recently, a non-native and invasive aquatic plant species, *Caulerpa taxifolia* (herein *C. taxifolia*), has been discovered in parts of Alimitos Bay (5-00-148). *C. taxifolia* is a tropical green marine alga that is popular in the aquarium trade because of its attractive appearance and hardy nature. In 1984, this seaweed was introduced into the northern Mediterranean. From an initial infestation of about 1 square yard it grew to cover about 2 acres by 1989, and by 1997 blanketed about 10,000 acres along the coasts of France and Italy. Genetic studies demonstrated that those populations were from the same clone, possibly originating from a single introduction. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. In the Mediterranean, it grows on sand, mud and rock surfaces from the very shallow subtidal to about 250 ft depth. Because of toxins in its tissues, *C. taxifolia* is not eaten by herbivores in areas where it has invaded. The infestation in the Mediterranean has had serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial fishing.

Because of the grave risk to native habitats, in 1999 *C. taxifolia* was designated a prohibited species in the United States under the Federal Noxious Weed Act. In addition, in September 2001 the Governor signed into law AB 1334 which made it illegal in California for any person to sell, possess, import, transport, transfer, release alive in the state, or give away without consideration various *Caulerpa* species including *C. taxifolia*.

In June 2000, *C. taxifolia* was discovered in Aqua Hedionda Lagoon in San Diego County, and in August of that year an infestation was discovered in Huntington Harbor in Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. Other infestations are likely. Although a tropical species, *C. taxifolia* has been shown to tolerate water temperatures down to at least 50°F. Although warmer southern California habitats are most vulnerable, until better information is available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted.

In response to the threat that *C. taxifolia* poses to California's marine environment, the Southern California *Caulerpa* Action Team, SCCAT, was established to respond quickly and effectively to the discovery of *C. taxifolia* infestations in Southern California. The group consists of representatives from several state, federal, local and private entities. The goal of SCCAT is to completely eradicate all *C. taxifolia* infestations.

Currently, *C. Taxifolia* has not been found in the Long Beach Marina. Furthermore, In discussions with SCCAT members, it was indicated that projects that disturb the marina bottom contribute to the potential spread of *C. Taxifolia* and that projects that only involve on or at surface work will not impact or contribute to the spread of *C. Taxifolia*. As proposed, the project will not involve any disturbance of the marina bottom, therefore, the project will not contribute or cause the potential spread of *C. Taxifolia*.

2. Eel Grass

Eelgrass (*Zostera marina*) is an aquatic plant consisting of tough cellulose leaves which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is considered worthy of protection because it functions as important habitat and foraging area for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and waterfowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds.

Impacts to eel grass beds are due to disturbance of the marina bottom and shading impacts caused by placement of structures on the water surface. The proposed project will involve like-for-like replacement of existing docks and will not create any new shading impacts. Since the project will not disturb the marina bottom or create any new shading impacts the project will not impact any eel grass that may be in the area. Therefore, the Commission finds that, as conditioned, the proposed project is consistent with Sections 30230, 30231 and 30240(b) of the Coastal Act.

D. Local Coastal Program

The City of Long Beach Local Coastal Program (LCP) was certified by the Commission on July 22, 1980. The proposed project complies with the policies of the certified LCP. However, the proposed project is located seaward of the mean high tide line and in the Commission's area of original jurisdiction. Because the proposed project is located in the Commission's area of original jurisdiction, the LCP is advisory in nature and only provides guidance. The standard of review for this project is the Coastal Act. As conditioned, the proposed project is consistent with the policies of Chapter 3 of the Coastal Act.

E. Unpermitted Development

In 2001 the applicant replaced approximately 15 fingers. The applicant was notified that dock replacement constituted development under the Coastal and would require a coastal development permit. The applicant subsequently submitted an application for the work completed and for proposed dock repair and maintenance work.

Although unpermitted development has taken place on the property prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Action by the Commission on the permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a Coastal permit.

F. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect which the activity may have on the environment.

Potential impacts are to boater access, marine resources, water quality and the visual resources of the area. As conditioned, all potential adverse impacts have been adequately mitigated. As conditioned, there are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.